IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

RP.No. 159 of 2001(A)

AGAINST THE ORDER IN CRP.1407/1996 Dated 23/11/1999
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PETITIONER/1ST RESPONDENT

LEELA ANTHARJANAM, W/O.NARAYANAN NAMBOODIRI, KUMARAN PLAKKAL MANA, CHERUKUDANGODE AMSOM, PALLIPURAM DESOM, OTTAPALAM TALUK
NOW RESIDING AT SANTHIGIRI ASRAM, KOLIYACODE,
THIRUVANANTHAPURAM REP. BY POWER OF ATTORNEY HOLDER
N.CHANDRAN, RESIDING AT SANTHIGIRI ASRAM KOLIYACODE,
NEDUMANGAD TALUKM THIRIVANANTHAPURAM DISTRICT

BY ADV. SMT.S.CHITHRA
SRI.T.C.MOHANDAS

RESPONDENTS/PETITIONER AND RESPONDENTS 2 TO 21:
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1. P.D.RAMA NARAYANA PRASAD, S/O.P.R.D.NAMBOODIRIPAD,
NOW RESIDING AT SREENILAYAM, PUNNASSERY MANA,
TRIKKARIYOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM

2. DAMODARAN NAMBOODIRI, S/O.NARAYANAN NAMBOODIRI
KUMARAM PULAKKAL MANA, CHERUKUNDAGODE AMSOM
PALLIPURAM DESOM, NOW RESIDING AT KAILAS HOUSE
PUTHUR VILLAGE, KOTTARAKKARA, KOLLAM

3. KRISHNAN NAMBOODIRI, S/O.PURUSHOTHAMAN NAMBOODIRI
KUMARAN PULAKKAL MANA, CHERUKUNDANGODE AMSOM
OTTAPPALAM TALUK

4. PURUSHOTAMAN NAMBOODIRI, S/O.PURUSHOTHAMAN NAMBOODIRI
KUMARAN PULAKKAL MANA,CHERUKUNDANGODE AMSOM
OTTAPPALAM TALUK

5. SAVITHRI ANTHARJANAM, D/O.SAVITHRI ANTHARJANAM,
KUMARAN PULAKKAL MANA,CHERUKUNDANGODE AMSOM

OTTAPPALAM TALUK

6. VASUDEVAN NAMBOODIRI, S/O.PURUSHOTHAMAN NAMBOODIRI, KUMARAN PULAKKAL MANA,CHERUKUNDANGODE AMSOM, OTTAPPALAM TALUK

7. THANKAM ALIAS SREEDEVI, D/O.PURUSHOTHAMAN KUMARAN PULAKKAL MANA, NOW RESIDING AT MUNDDAPPAKKAD MANGALAM PUARUTHOOR.P.O.

8. NARAYANAN NAMBOODIRI, S/O.PURUSHOTHAMAN NAMBOODIRI, KUMARAN PULAKKAL MANA,CHERUKUNDANGODE AMSOM, OTTAPPALAM TALUK

9. NANGAYYA ANTHERJANAM, S/O.PERUMBALATHU KIZHAKKINIYAKATHU MANAKKAL SIVARAMAN NAMBOODIRI, KUMPIDI.P.O., ANAKKARA VILLAGE

10. SREEDEVI ALIAS AKAYIL THAMPURAN, W/O.VENGATTOOR MANAKKAL LATE VASUDEVAN NAMBOODIRI, NALALASSERY VILLAGE, (KOTHACHIRA AMSOM.P.O.) DESOM (VIA) KOOTTANAD, PALAKKAD DISTRICT

11. SAVITHIR ANTHARJANAM, W/O.PANAMBATTA MANAKKAL LATE KRISHNAN NAMBOODIRI, P.O.PULLASSERY AMSOM DESOM IN KOPPAM PANCHAYAT, VIA PATTAMBI, PALGHAT DISTRICT

12. PARAMEL MANAKKAL VALIYA RAMAN NAMBOODIRI, KADAVALLOOR VILLAGE, KADAVALLOOR.P.O., VIA PERUMBILAVE, THRISSUR DISTRICT

13. RUDRAN ALIAS RAVI NAMBOODIRI, S/O.PARAMEL MANAKKAL RAMAN NAMBOODIRI, KADAVALLOOR VILLAGE, KADAVALLOOR.P.O. VIA PERUMBILAVU

14. P.M.SAVITHRI, D/O.VALIYA RAMAN NAMBOODIRI, PARAMEL MANA KADAVALLOOR VILLAGE, KADAVALLOOR.P.O., VIA PERUMBILAVU

15. P.M.KRISHNAN NAMBOODIRI, S/O.VALIYA RAMAN NAMBOODIRI, PARAMEL MANA, KADAVALLOOR VILLAGE, KADAVALLOOR.P.O., VIA PERUMBILAVU

16. P.M.VASUDEVAN NAMBOODIRI, S/O.VALIYA RAMAN NAMBOODIRI, PARAMEL MANA, KADAVALLOOR VILLAGE

17. P.M.RAMAN NAMBOODIRIPAD, S/O.VALIYA RAMAN NAMBOODIRI, PARAMEL MANA, KADAVALLOOR VILLAGE

18. REMANI MINOR BY GUARDIAN VALIYA RAMAN NAMBOODIRIPAD BY HER COURT GUARDIAN VALIYA RAMAN NAMBOODIRIPAD THE 13TH RESPONDENT

19. P.R.UMADEVI ALIAS BINDU, W/O.MARAMANGALATH, THARANANELLUR VASUDEVAN NAMBOODIRI,

NEAR PERINCHERY CHURCH, OLLUR.P.O

20. THE RECEIVER IN THE CASE K.G.NAIR, ADVOCATE, OTTAPPALAM.P.O., PALAKKAD DISTRICT

R1 BY ADV. SRI.N.NEELAKANDAN NAMPOOTHIRI
R3 & R4 & R6 TO R8 BY SRI.A.P.CHANDRASEKHARAN
R2 BY SRI.P.S.NARAYANA RAJA

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.P.NO.159 OF 2001

Dated 1st January 2007

O R D E R

Review petition is filed challenging the order in C.R.P.1407/96 dated 23/11/1999 passed by this court. As per preliminary decree and judgment in O.S.10/1971 dated 31/7/1976, trial court found that plaintiff is entitled to 1/19 share, defendants 1 to 8 are entitled to get 1/19 shares each as well as 1/19 share of deceased Nangayya Antharjanam and they are together entitled to 9/19 shares. It was also found that defendants 9 to 14 are entitled to get 1/9 shares each and so they are together entitled to 6/19 shares. It was also recorded that on the death of defendants 9 and 11 their 1/9 share each devolved on defendants 12 and 13. Even otherwise they entitled to get 1/19 shares each. Defendants 15 and 16 are entitled to get one share each apart from 1/19 shares due to deceased Krishnan Namboothiri. As 15th defendant is no more and 16th defendant was recorded the legal heir, 16th defendant is entitled to get 3/19 shares.

2. As per order dated 12/2/1996 consequent to the death of 10th defendant trial court reallotted the shares. I.A.487/96 was filed by 14th defendant to review the order contending that shares were not correctly calculated. I.A.599/96 was filed by 12th defendant raising similar contentions. As per common order dated 30/3/1996, trial court worked out the shares and directed the Commissioner to divide the properties in accordance with the shares. It is challenging that order 20th defendant, legal heir of 13th defendant filed the revision. This court as per order dated 23/11/1999 modified that order holding that defendants 12 and 13 are entitled to 240 shares each and 10th defendant has only 120 shares and on the death of 13th defendant her share devolved on defendants 20 and 21 and 20th defendant as legal heir is entitled to 240/2 shares instead of 100 shares as found by the trial court.

3. This review petition is filed by 14th defendant contending that this court should not have interfered with the impugned order, as it is a decree as defined under clause 2 of Section 2 of Code

of Civil Procedure and when an appeal lies against the said order, no revision will lie and therefore earlier order is to be reviewed and revision petition is to be dismissed as not maintainable. It was also contended that 14th defendant being the legal heir of 10th defendant had participated in the enquiry conducted by the trial court and in such circumstances this court should not have interfered with the order of the trial court.

4. Learned counsel appearing for petitioner and respondents were heard. The only point for consideration is whether there is any apparent error or otherwise sufficient reason to review the order passed by this court on 23/11/1999.

5. On going through the preliminary decree and judgment as well as the order passed by this court on 23/11/1999 and on hearing the arguments of learned counsel appearing for petitioner and respondents, I do not find any apparent error or sufficient reason warranting review of the order passed by this court on 23/11/1999. Order Challenged in revision was not a decree as canvassed by the petitioner. Subsequent to

passing of preliminary decree, when final decree application was pending, consequent to the death of defendants 10 and 13 re-allotment of the shares of deceased was warranted. Trial court directed shares due to the defendants 10 and 13 to be allotted to the legal heirs, which was sought to be reviewed by filing I.A.487/96 and I.A.599/96. Order challenged in the C.R.P is the common order in those applications whereunder learned Sub Judge re-allotted shares and directed the Commissioner to divide the properties in accordance with the said shares. Order is definitely revisable and therefore the order in the C.R.P does not warrant a review as sought for by the petitioner on the ground that impugned order could have been challenged only by filing the appeal.

6. Preliminary decree shows that 10th defendant is entitled to get 120/2280 shares and his widow 14th defendant is also entitled to get 120/2280 shares. Learned Sub Judge in the impugned order wrongly taken 10th defendant as legal heir of 11th defendant and therefore stated that 10th defendant is also entitled to get 80/2280 shares due to 11th

defendant. That mistake was corrected by this court as per order dated 23/11/1999. 10th defendant is also entitled to 120/2280 shares due to 9th defendant. Therefore 13th defendant is entitled to 240 out of 2280 shares. This court corrected that mistake also. I find no reason to review that order as sought for. Learned Sub Judge is directed to pass final decree as expeditiously as possible.

Revision petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.